

4. Venue is proper in this district under 28 U.S.C. § 13981(a) in that the Defendant is subject to personal jurisdiction in this district at the time the action is commenced and maintains her principal place of business in this district.

THE PARTIES

5. Smith is a resident of the State of Indiana.

6. Upon information and belief, Defendant is, and at all times mentioned herein was, a resident of Jefferson County, Illinois, and maintains a place of business in Mt. Vernon, Jefferson County, Illinois.

FACTUAL BACKGROUND

7. On February 11, 2014, Smith was granted registration number 4,480,697 by the United States Patent and Trademark Office (“the ‘697 registration”) for the words and mark “Finders Keepers” (the “Finders Keepers trademark”). The registration was granted for International Class: 035 for “Retail outlets featuring antiques, memorabilia and collectibles.” A true, correct and complete copy of the ‘697 registration is attached hereto as Exhibit A.

8. Smith is the owner and operator of an antique and consignment store located in Princeton, Indiana, and called the “Finders Keepers Vendor Outlet Mall,” and has operated that business in that location under that name for many years.

9. Upon information and belief, the Defendant operates a consignment store in Mt. Vernon, Illinois, under the name “Finders Keepers Consignment and Resale.”

10. Upon information and belief, the consignment store operated by the Defendant in Mt. Vernon, Illinois, under the name “Finders Keepers Consignment and Resale” is the same type of store and sells the same types of items as the consignment

store owned and operated by Smith in Princeton, Indiana, under the name “Finders Keepers Vendor Outlet Mall.”

11. Smith, through his legal counsel, sent a letter to Defendant on August 15, 2016, demanding that the Defendant cease and desist from the use of the trademark “Finders Keepers.” A true, correct and complete copy of that letter is attached hereto as Exhibit B.

12. On April 11, 2017, Smith again, through his legal counsel, sent a cease and desist letter to Defendant demanding that the Defendant cease using the trademark “Finders Keepers.” A true, correct and complete copy of that letter is attached hereto as Exhibit C.

13. Defendant never responded to either of the above-referenced cease and desist letters and continues to use the trademark “Finders Keepers” to identify its consignment business.

COUNT I

FEDERAL TRADEMARK INFRINGEMENT UNDER 15 U.S.C. § 1125(a)

14. Smith realleges and incorporates each and every allegation contained in the paragraphs above as if fully set forth herein.

15. Defendant’s wrongful use of the name “Finders Keepers” in association with its consignment store constitutes an infringement of Smith’s registered Finders Keepers trademark and is likely to cause confusion, mistake and deception of the public as to the identity and origin of the retail items offered for sale by Defendant, causing irreparable harm to Smith for which there is no adequate remedy at law. Smith will continue to suffer irreparable harm unless this Court enjoins Defendant’s conduct.

16. Defendant's actions constitute knowing, deliberate and willful infringement of the Finders Keepers trademark. The knowing and intentional nature of the acts set forth herein renders this an exceptional case under 15 U.S.C. § 1117(a).

COUNT II

DECEPTIVE TRADE PRACTICES UNDER 815 III. Comp. Stat. 510/2

17. Smith realleges and incorporates each and every allegation contained in the paragraphs above as if fully set forth herein.

18. Smith's consignment business in Princeton, Indiana, is approximately eighty-four (84) miles away from the Defendant's consignment store in Mt. Vernon, Illinois, a distance which is effectively the same market area for the types of items sold at the two locations.

19. Defendant's use of the name Finders Keepers in association with its consignment store causes a likelihood of confusion or a misunderstanding as to affiliation, connection or association with or between the Defendant's consignment store and Smith's consignment store in violation of 815 ILCS 510/2(a)(2) and (3).

DEMAND FOR JURY TRIAL

Smith hereby demands trial by jury pursuant to Rule 38(b) as to all issues which are triable by a jury.

PRAYER FOR RELIEF

WHEREFORE, Smith prays for judgment in his favor and against Defendant as follows:

1. Defendant, Sara Piercy d/b/a Finders Keepers Consignment and Resale, and her agents, officers, employees, representatives, successors, assigns, attorneys and

all other persons acting for, with, by, through or under authority from Defendant, or in concert or participation with Defendant, and each of them, be permanently enjoined from:

- a. Using the name "Finders Keepers" in association with the marketing of Defendant's consignment business and the sale of any items offered for sale therein;
- b. Using any trademark, trade dress, service mark, name, logo, design or source designation of any kind on or in connection with Defendant's consignment business that is a copy, reproduction, colorable imitation or simulation of, or confusingly similar to, the Finders Keepers trademark; and
- c. Using any trademark, trade dress, service mark, name, logo, design or source designation of any kind on or in connection with Defendant's consignment business that is likely to cause confusion, mistake, deception or public misunderstanding that Defendant's consignment store is sponsored by or authorized or in any way connected or related to Smith.

2. Defendant be compelled to account to Smith for any and all profits derived by Defendant from the use of the name Finders Keepers in connection with Defendant's consignment business, including pre-judgment interests thereon;

3. Smith be awarded all damages caused by the acts forming the basis of this Complaint, together with pre-judgment interests thereon;

4. Based on Defendant's knowing and intentional use of the confusingly similar Finders Keepers name to advertise its consignment business, that the damages awarded

to Smith be trebled and the award of Defendant's profits be enhanced as provided for by 15 U.S.C. § 1117(a);

5. Defendant be required to pay to Smith the costs of this action and Smith's reasonable attorney's fees pursuant to 15 U.S.C. § 1117(a); and

6. Smith be awarded such other and further relief as is just and proper in the premises.

Respectfully submitted,

/s/ Jonathan R. Cantrell_____

Jonathan R. Cantrell

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